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No. 58

In the Supreme Court of the United States

OCTOBER TERM, 1947

W. CLAY RODGERS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The district court did not render an opinion. The opinion of the circuit court of appeals (R. 36–41) is reported in 158 F. 2d 835.

JURISDICTION

The judgment of the court below was entered on January 13, 1947 (R. 35). The petition for a writ of certiorari was filed on March 28, 1947, and was granted on May 5, 1947, but "limited to the first two questions presented by the petition for the writ" (R. 42). The jurisdiction of this Court rests on Section 240 (a) of the Judicial

Code as amended by the Act of February 13, 1925 (28 U. S. C. 347).

QUESTIONS PRESENTED

The first two questions, as phrased in the petition for a writ of certiorari, are: "(1) Should interest on penalties be allowed prior to judgment? and (2) Are the exactions here imposed, in reality, penalties, or a mere debt?"

The two questions may be restated as presenting the single question whether interest on "penalties," incurred as the result of marketing cotton in excess of farm marketing quotas fixed pursuant to the Agricultural Adjustment Act of 1938, as amended, is recoverable for the period between the date such "penalties" became due and payable and the date judgment is entered.

STATUTE AND ADMINISTRATIVE REGULATIONS INVOLVED

The pertinent provisions of the Agricultural Adjustment Act of 1938, c. 30, 52 Stat. 31, as amended (7 U. S. C. 1281, *et seq.*) and of the regulations issued thereunder by the Secretary of Agriculture are set forth in the Appendix, *infra*, pp. 30–36.

The Act was designed to assure orderly marketing conditions for certain agricultural products, including cotton, and to provide an adequate and balanced flow of such commodities by leveling out the recurring surpluses and shortages

which had been found to exist.[1] The plan adopted to achieve the desired goals in respect of cotton is similar to that adopted for tobacco, which was before this Court in *Mulford* v. *Smith*, 307 U. S. 38, and that for wheat, which this Court considered in *Wickard* v. *Filburn*, 317 U. S. 111.

To carry out the purposes of the Act, the Secretary of Agriculture is required, not later than November 15 of each year, to determine the total supply, the normal supply, and the carry-over of cotton as of August 1 of such year. He must also determine the probable domestic consumption and estimated exports and carry-over for the ensuing marketing year, and, if he finds that the total supply for the marketing year exceeds by more than 7 per centum the normal supply for such year, he is required to place in effect marketing quotas for the ensuing marketing year unless disapproved in a referendum by more than one-third of those engaged in producing cotton in the preceding year.

Elaborate and specific standards for determining farm marketing quotas are provided by the Act, pursuant to which the Secretary apportions the national baleage allotment of cotton to

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[1] The Act's declaration of policy is set forth in Section 2 (7 U. S. C. 1282). Reports of Congressional Committees on the bill which eventuated in the Act state the purposes of the Act in similar language. S. Rep. No. 1295, H. Rep. No. 1645, 75th Cong., 2d sess.; H. Rep. No. 1767, 75th Cong., 3d sess.

cotton-producing States and then converts the State baleage allotment into acres and apportions it to counties and farms with the aid of local committees of cotton producers. Upon the basis of its farm acreage allotment, the farm marketing quota for a particular farm is computed as a number of bales equal to the normal or actual production, whichever is greater, of the allotted acreage plus that portion of any previous crop which could have been marketed without penalty.

The Act does not prohibit the marketing[2] of cotton by any given producer in excess of the quota established for his farm but, rather, requires such a producer to pay an amount per pound thereon prescribed by the Act. The individual producer is thus free to determine whether to produce and market only so much cotton as is permitted by his farm marketing quota or whether to produce and market cotton in an unlimited amount but subject to the prescribed "penalties" in respect of cotton marketed in excess of his quota. Producers who elect to produce and market cotton in accordance with their established quotas are alone eligible to receive payments under the Soil Conservation and

[2] Marketing is defined by the Act to mean "to dispose of, in raw or processed form, by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos." Sec. 301 (b) (6) (A), (B), as amended, 7 U. S. C. 1301 (b) (6) (A), (B).

Domestic Allotment Act, and may receive loans from the Commodity Credit Corporation in amounts greater than are accorded those who elect to produce and market cotton in excess of their established quotas.[3]

With respect to excess cotton marketed while quotas were in effect, the Act prescribed a "penalty" of 3 cents a pound for the 1940–41 marketing year, and a "penalty" at the rate of 50 per centum of the basic rate of the loan for cooperators for any marketing years thereafter.[4] All "penalties" which may accrue are required to be paid to the Secretary of Agriculture under such conditions as he may by regulation prescribe and must be covered by him into the general fund of the Treasury of the United States (Sec. 372, *infra*, p. 31).

The "penalty" with respect to the marketing of cotton to any person in the United States must be collected by the buyer, and the regulations of the Secretary make provision both for the compulsory collection of "penalties" by buyers and

[3] Secs. 302 (c), 349, 7 U. S. C. 1302 (c), 1349.

[4] Section 348, supplemented by the Act of May 26, 1941, Appendix, *infra*, pp. 30–31, 31–32. The "penalty" on this basis amounted to 7 cents per pound for the 1941–42 marketing year, and 8 cents per pound for the 1942–43 marketing year. The administrative regulations covering the amounts of the "penalty" for the three years are: for 1940–41, Sec. 722.242 (5 F. R. 1894); for 1941–42, Sec. 722.342 (6 F. R. 971, 1998, 3935); and for 1942–43, Sec. 722.439 (7 F. R. 4368, 4753).

for the voluntary collection by other transferees.[5] The producer, however, remains liable for the payment of any "penalty" arising out of the marketing of above-quota cotton if it is not collected by the buyer or transferee (Sec. 348, Appendix, *infra*, pp. 30–31). The producer may make prepayment of "penalties" he expects to incur or, under prescribed conditions, may deposit the amount of the penalty in escrow or give a bond to secure the same.[6] "Penalties" erroneously collected may be refunded to the person who bore the burden of the payment.[7] "Penalties" become due at the time above-quota cotton is marketed and must be remitted not later than 15 days from the day succeeding the day the cotton is marketed by the producer, if collected by the buyer, and at the time the producer files the farm operator's report otherwise required by the regulations, if they are remitted by the producer.[8]

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[5] Section 372 (a), *infra*, p. 31. The administrative regulations for the three marketing years in question are, respectively, Sec. 722.243 (5 F. R. 1894), Sec. 722.343 (6 F. R. 972), and Sec. 722.440 (7 F. R. 4369).

[6] Administrative regulations (1940–41), Secs. 722.243, 722.256 (5 F. R. 1894, 1899–1900); (1941–42) Secs. 722.343, 722.356 (6 F. R. 972, 977–978); (1942–43) Secs. 722.440, 722.453 (7 F. R. 4369, 4374).

[7] Section 372 (c), 7 U. S. C. 1372 (c).

[8] A farm operator's report is required from each producer not later than 15 days after all cotton on the farm is marketed, or not later than March 1 of the marketing year, whichever is the earlier, but in the event that all cotton on the farm is not marketed prior to March 1, a supplemental report is required within 15 days after it is marketed or not

STATEMENT

In August 1945, the United States filed its complaint against petitioner in the United States District Court for the Western District of Tennessee, seeking to collect "penalties" incurred by him under the cotton marketing quota provisions of the Agricultural Adjustment Act, plus interest from the time such penalties became due and payable (R. 2–8). After the parties had entered into a written stipulation of facts, the district court gave judgment for the United States in the amount of the penalties incurred, with interest upon each penalty from the date it became due and payable to the date of judgment (R. 22–24). On appeal from this judgment, it was affirmed by the court below (R. 35).

Farm acreage allotments for cotton were established for petitioner's farm in Chicot County, Arkansas, for the crop year 1940, and for his farms in Tunica County, Mississippi, for the crop years 1941 and 1942, and, upon the basis of such acreage allotments, his farm marketing quotas were determined for the corresponding marketing years. Petitioner planted cotton on each farm substantially in excess of his acreage allotments, and marketed cotton from each farm in excess of the

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later than the first day of the following marketing year (August 1), whichever is earlier. Administrative Regulations, (1940–41) Sec. 722.252 (d) (5 F. R. 1899); (1941–42) Sec. 722.353 (d) (6 F. R. 977); and (1942–43) Sec. 722.450 (d) (7 F. R. 4373).

established farm marketing quotas during each marketing year (1940–41, 1941–42, and 1942–43) and while such quotas were in effect (R. 18–21).

The petitioner's principal contention in both courts below was that termination by the War Food Administrator of marketing quotas for the 1943–44 marketing year and his announcement that quotas would not be in effect in the 1944–45 marketing year operated to suspend the obligation to pay "penalties" for prior years.* This contention was rejected by both courts below and it is not before the Court under the limited writ of certiorari which was granted (R. 42). The sole question presented for determination is whether the courts below correctly determined that simple interest should be added to petitioner's obligations at the rate of 6% per annum from the dates the respective "penalties" became due until the date of judgment in favor of the United States.

SUMMARY OF ARGUMENT

I

The federal courts have always adhered to the principle that where payment of a sum certain is

*The administration of the marketing quota provisions of the Act was transferred from the Secretary of Agriculture to the War Food Administration by Executive Orders 9322 and 9334 (8 F. R. 3807, 5423).

Quotas have not been in effect for any marketing year since 1944–45, and, on July 24, 1946, Congress provided that quotas should not be established for the 1947 crop because of a shortage of fats and oils and protein feeds (Joint Res. July 24, 1946, c. 616, 60 Stat. 662).

owing and is unjustifiably withheld, interest may properly be awarded as an appropriate measure of damages for the withholding. This principle is applied where payment is owing as a result of an obligation imposed by statute though the statute makes no express provision for the payment of interest. Application of this general principle is particularly appropriate in the present case in view of the general scheme and objectives of the Agricultural Adjustment Act of 1938. That Act set up a program under which equality of dealing among all cotton producers was fundamental. That equality could be attained only if those who chose to produce and market beyond-quota cotton paid equal and not varying sums in consequence. To adopt petitioner's view would make for inequality.

II

We have been unable to discover any general "rule of law" which forbids an award of interest when payment of a "penalty" imposed by statute is delayed. But even if there were such a rule, it could not aid the petitioner. While the obligation here imposed on petitioner is denominated by the Act as a "penalty", it is not a true penalty in the usual sense of that term. It is not punitive in nature and the course of conduct which gives rise to the obligation is not forbidden. Congress was deliberate in its decision that above-quota marketing should not be banned. One circumstance indicating that the obligation which is

imposed on such marketing nevertheless leaves the cotton producer free to elect what action he will take is that the obligation may be prepaid.

ARGUMENT

I

THE UNITED STATES IS ENTITLED TO INTEREST ON "PENALTIES" PRESCRIBED BY THE AGRICULTURAL ADJUSTMENT ACT OF 1938 FOR MARKETING IN EXCESS OF QUOTAS, FROM THE DATE SUCH "PENALTIES" ACCRUE

The liability of the petitioner to pay to the United States "penalties" for marketing cotton in excess of marketing quotas, arises solely out of the Agricultural Adjustment Act of 1938. The question of whether the United States is entitled to interest on the sums thus recoverable under that Act is entirely a matter of federal, not local, law. *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697, 715. Where, as here, the applicable federal statute is silent as to interest, that question is not controlled by state statute or local common law; rather, "it is for the federal courts to determine, according to their own criteria, the appropriate measure of damage, expressed in terms of interest, for non-payment of the amount found to be due. *Royal Indemnity Co.* v. *United States*, 313 U. S. 289, 296.[10]

[10] There is no general federal statute relating to interest before judgment on sums due to the United States. 28 U. S. C. 811, which relates only to interest on judgments, is entirely inapplicable.

This Court has repeatedly emphasized that the determination whether interest should be allowed under given circumstances is to be made "from the point of view of reason and justice even though no express statute existed for compelling this payment." *Billings* v. *United States,* 232 U. S. 261, 286. The allowance or denial of interest does not flow from the application of rigid rules but results from the flexible considerations of equity and fairness. *Board of Commissioners* v. *United States,* 308 U. S. 343, 350, 352. "If a debt ought to be paid at a particular time, and is not, owing to the default of the debtor, the creditor is entitled to interest from that time by way of compensation for the delay in payment." *Young* v. *Godbe,* 15 Wall. 562, 565.[11] "Otherwise there would be no motive to pay promptly, and no equality between those who should pay then [when the sum first becomes due] and those who should pay at the end of a protracted litigation." *Casey* v. *Galli,* 94 U. S. 673, 677–678.

The application of these principles has given

[11] As this Court has said, he "who has had the use of money owing to another justly may be required to pay interest from the time the payment should have been made." *Miller* v. *Robertson,* 266 U. S. 243, 257–258. For under such circumstances it is "no hardship" to require interest. *Crescent Mining Co.* v. *Wasatch Mining Co.,* 151 U. S. 317, 323. The allowance of interest, when not stipulated for by contract or authorized by statute, is justified "as damages for the detention of money or of property, or of compensation, to which the plaintiff is entitled." *United States* v. *North Carolina,* 136 U. S. 211, 216.

content to their statement. In *Casey* v. *Galli, supra,* a case analogous to that here under consideration in that it involved a statutory obligation to pay, the receiver of a bank recovered from a stockholder, based upon his statutory obligation to creditors, an amount equal to the par value of his stock. This Court awarded interest from the time the obligation to pay accrued.[12] The United States has also been granted interest upon the amount of an excise tax on foreign built yachts owing to it. *Billings* v. *United States, supra.* And a shipper is entitled to interest on the amount of an excessive freight charge recovered by him from the carrier. *Arkadelphia Milling Co.* v. *St. Louis S. W. Ry. Co.,* 249 U. S. 134, 147; *L. & N. R. R. Co.* v. *Sloss-Sheffield Co.,* 269 U. S. 217, 238. In a suit upon a contract with an enemy alien maintained against the Alien Property Custodian by virtue of the Trading with the Enemy Act, which makes no provision for interest, interest upon the amount of the recovery may nevertheless be allowed. *Miller* v. *Robertson,* 266 U. S. 243. Even in a suit upon a fire policy where the damages are determined only by jury verdict, interest is proper where necessary in order to

[12] See also *Bowden* v. *Johnson,* 107 U. S. 251. In *Garvy* v. *Wilder,* 121 F. 2d 714 (C. C. A. 7), on similar facts, the stockholder's obligation to pay interest was recognized on the authority of the *Casey* case but liability to pay was held barred by the statute of limitations.

arrive at fair compensation. *Concordia Ins. Co.* v. *School District*, 282 U. S. 545.[12]

The flexibility with which this Court has treated questions respecting interest is equally illustrated by cases in which it has been denied. In *United States* v. *Sanborn*, 135 U. S. 271, the United States had paid sums to the defendant on a contract whereby he was to receive 50% of certain overdue taxes which he might collect. The Government was permitted to recover payments erroneously made to him under this contract but interest was denied owing to the unexcused ten-year delay in instituting suit for recovery. In *Board of Commissioners* v. *United States*, 308 U. S. 343, interest was denied the United States on a recovery by it, as guardian of an Indian, of taxes collected by a county on land of the Indian which, by treaty with the United States, was tax-free. The United States had erroneously given the Indian a fee simple title to the land, thus in effect authorizing imposition of the county tax, and had then failed to correct

[12] In *Jones* v. *United States*, 258 U. S. 40, the United States sued to recover the value of lands it was induced to part with through defendant's fraud. This Court affirmed the allowance of interest upon the value of the lands from the date the United States parted with them. Where one wrongfully detains money received as a stake-holder, interest as damages may be added. *Kishi* v. *Humble Oil Co.*, 10 F. 2d 356 (C. C. A. 5).

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its known error for eight years. The Court considered that allowance of interest would be manifestly unfair to the county and would give beneficiaries of federal rights preferred positions over other aggrieved local taxpayers who, by local statute, were denied interest on recovery of unowed tax exactions.

The general basis upon which interest is allowed in the federal courts was explored and the rule restated in *Royal Indemnity Co.* v. *United States,* 313 U. S. 289. The Court determined that where an obligation to pay a fixed sum is not discharged, with the result both that the debtor has, and the creditor is deprived of, the use of the money while payment is withheld, interest at a fair rate is "an appropriate measure of damage for the delay in payment" (p. 297). The Court recognized that "the rule governing the interest to be recovered as damages for delayed payment of a contractual obligation to the United States is not controlled by state statute or local common law" and continued (p. 296):

> In the absence of an applicable federal statute, it is for the federal courts to determine, according to their own criteria, the appropriate measure of damage, expressed in terms of interest, for non-payment of the amount found to be due.

In applying these principles to the present case, no reasons are apparent why interest should not be allowed on petitioner's obligations to the United

States, and elemental considerations of fairness indicate that interest should be allowed. Petitioner's obligations with respect to cotton produced and marketed in excess of marketing quotas from each of his three farms became fixed and definite by operation of the Act and the regulations thereunder on March 1 of the respective marketing years (R. 23–24). From that time until the entry of judgment upon the Government's complaint, petitioner's obligations were due and payable but were withheld. Thereby, petitioner had the use of the money and, correlatively, the United States was deprived of its use.

A determination whether interest is owing on a "penalty" under the Agricultural Adjustment Act must be decided in the light of the purpose and policies of that Act and the obligations it imposes. What Congress sought to do in the Act was to provide a constant flow of agricultural commodities, consonant with demand, and thus avoid the recurring extremes of over-production and of under-production. See *supra*, pp. 2–3. "In its effort to control total supply, the Government gave the farmer a choice which was, of course, designed to encourage cooperation and discourage non-cooperation." *Wickard* v. *Filburn*, 317 U. S. 111, 130. That is, the cotton-producer might produce and market cotton only in an amount within his quota, and thus become eligible for certain benefits (see *supra*, pp. 4–5), or he might, if he

choose, produce and market all the cotton within his ability. In the latter event, he became liable for the payment of certain sums to the Secretary of Agriculture.

Equality of dealing among all cotton producers is fundamental to the proper functioning of such an inclusive program. Those who choose to produce and market beyond-quota cotton should pay equal, and not varying, sums as a result of their election. And equality among them requires that those who pay their obligations promptly should not be prejudiced by permitting those who pay three or more years later, and only after litigation, to escape payment of interest on the sum unjustifiably withheld. Supplying a motive to pay promptly and establishing equality between those who do so and those who pay belatedly have been recognized by this Court as proper considerations in determining whether interest is owing to meet a statutory obligation. Cf. *Casey* v. *Galli*, 94 U. S. at 677–678.

The fact that neither the Act nor the administrative regulations made express provision for payment of interest is not material. It has been established and repeatedly affirmed since *Young* v. *Godbe*, 15 Wall. 562, that the absence of statutory provision for payment of interest does not preclude the award. Cf. the dissenting opinion in *Royal Indemnity Co.* v. *United States*, 313 U. S. at 297. See also *Billings* v. *United States*, 232 U. S. 261, 286, cited *supra*, p. 11. Congress must

be deemed to have legislated in view of this familiar principle and to have left the question of interest to be determined by the courts in accordance with circumstances as they arose.

Finally, it may be noted that there is here present only the naked question whether or not interest may be allowed on the penalties (R. 21). Petitioner has offered no justification for his delay and there is none. No question has been raised respecting either the period, the rate of interest, or the principal amount of the penalties. Obviously, the district court exercised a permissible discretion in fixing a rate of six per centum,[14] and in computing it from the time petitioner's respective obligations became due and payable to the date of judgment.

II

THE FINANCIAL BURDENS IMPOSED ON THE MARKETING OF EXCESS COTTON, WHILE ENTITLED "PENALTIES", ARE NOT OF SUCH A NATURE AS TO FALL WITHIN ANY RULE AGAINST THE ASSESSMENT OF INTEREST ON TRUE FINES OR PENALTIES

Petitioner's contention is that notwithstanding the rule that federal courts normally allow interest if an obligation is owed and inequitably with-

[14] By statute, Tennessee has established "legal interest" at six per centum. Michie's Tenn. Code of 1938, sec. 7302. This fact, while not controlling, may well have been considered influential by the district court. *Young* v. *Godbe*, 15 Wall. 562; *Royal Indemnity Co.* v. *United States*, 313 U. S. 289.

held, the payment which the statute requires when over-quota cotton is marketed is designated a "penalty" and that it is well settled that no interest is owing on a "penalty." This view was upheld in *United States* v. *West Texas Cottonoil Co.*, 155 F. 2d 463 (C. C. A. 5), where, however, the question arose only incidentally, and for the first time, on appeal.

In the *West Texas Cottonoil Co.* case, *supra*, the Circuit Court of Appeals for the Fifth Circuit, without discussion or citation of authority, held "that interest before judgment is not collectible on a statutory penalty unless given by the statute and that since in fact and in law the amount sued for is a penalty, no interest can be recovered on it before judgment" (p. 466).

In addition to the *West Texas Cottonoil Co.* case, petitioner relies upon decisions of state courts in which it was held that interest before judgment could not be allowed on penalties. Apart from the fact that the question is not governed by state law, these decisions are singularly unpersuasive in the instant context. Illustrative of these is the Tennessee case of *McCreary* v. *First National Bank*, 109 Tenn. 128, 70 S. W. 821, on which petitioner relies, where interest was denied on the recovery, under a federal statute, of twice the amount of interest which the defendant bank had wilfully and usuriously charged. Further typical of this group of cases

is *Blair* v. *Sioux City & P. Ry. Co.*, 109 Ia. 369, 80 N. W. 673, where a shipper recovered under a state statute three times the excessive amount of the illegal freight rate charged him. The court denied interest since the statute was penal in character and "therefore liability should be limited to the amount fixed by the statute as compensation for the damages sustained, to wit, the treble damages, attorney's fees, and costs" (109 Ia. at p. 385).[15]

On examination it will be found that the cases upon which petitioner relies as establishing a rule against interest on penalties are uniformly instances in which the statute is truly prohibitory in character and may allow a private party to recover double or triple the damages suffered or the sum involved in the transaction. In the *McCreary* case, the Tennessee court pointed out that "The act of Congress makes no provision for the allowance of interest, but fixes the amount of recovery at twice the amount of the usury charged" (109 Tenn. at p. 142). In the *Blair* case, the Iowa court stated that, "This statute is penal in character, and therefore liability should be limited to the amount fixed by the statute as compensation for the damages sustained, to wit, the treble

[15] Cf. *Wabash Ry. Co.* v. *Koenig*, 274 Fed. 909 (C. C. A. 8), certiorari denied, 257 U. S. 660. The shipper, suing to recover excessive freight charges upon principles of common law and without the benefit of a penalty statute, was awarded interest on his recovery.

damages, attorney's fees, and costs." No relevant authority was cited by either court. However, the rationale of these and similar cases seems to be that where the statute provides a measure of recovery in excess of single damages, or otherwise specifies the items to be recovered in addition to the damage suffered, the courts are not free to apply the principles that would normally govern the allowance of interest.

An analogous line of reasoning appears in this Court's decision in *Brooklyn Bank* v. *O'Neil*, 324 U. S. 697. Interest was there held not recoverable under Section 16 (b) of the Fair Labor Standards Act (52 Stat. 1060 at 1069, 29 U. S. C. Sec. 216 (b)), authorizing suits by employees to recover unpaid minimum wages or unpaid overtime compensation, and an additional equal amount as liquidated damages. This Court determined that, since Congress had seen fit to fix the sum recoverable for delay in payment, and since interest is customarily allowed as compensation for delay in payment, allowance of interest would be inconsistent with the intent of Congress and would have the effect of giving an employeee double compensation for damages arising from delay in payment of wages owed him.

We have been unable to discover any "rule of law" forbidding the award of interest on a penalty. While, at one time, "interest and usury were synonymous terms, and it was unlawful to take any money for the use of money", that has

not been true since the reign of Henry VIII."[16] Nor has there been universal agreement that interest is not recoverable on a penal bond. As this Court noted in *United States* v. *U. S. Fidelity Co.*, 236 U. S. 512, 530, while the "weight of authority in England is adverse to the recovery", in "this country the tendency of the decisions in the state courts seems to be in favor of the allowance of such interest." And while this Court itself has favored the English rule, it has done so "usually but not invariably."

But whatever rule is to be deemed controlling as to penal bonds, generally instruments reflecting the agreements of private parties, such rule is inapplicable to penalties imposed by law. For while courts of equity have been reluctant to enforce such penalty provisions where the amount of the penalty sought is not closely related to the damage reasonably anticipated, there has been no such reluctance when, as here, "the law imposes by statute a penalty for the doing or failure to do a particular act." 3 Williston, *Contracts* (1936) pp. 2178–2179."[17]

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[16] Potter, *The Law of Interest* (1910), p. 5; Perley, *Principles of the Law of Interest* (1893), pp. 1–4; 37 Henry VIII, c. 9. See also *supra*, pp. 10–14.

[17] A judgment recovered by the United States as a fine in a prosecution by indictment does not bear interest only because interest upon judgments rests solely on statutory provision and the only relevant statute provides for interest only on judgments "in civil causes." *Pierce* v. *United States*, 255 U. S. 398, 406.

Assuming, *arguendo*, however, that there is a principle that interest should not be allowed on true penalties prior to judgment, such principle would not aid the petitioner. As the court below stated (R. 40):

> We are persuaded that the so-called penalties prescribed in the Act are not in a true sense the penalties considered by the Tennessee Court upon which interest was held not recoverable. The *McCreary* case, supra, involved penalties under the National Banking Act for usury, an imposition that was definitely penal in nature and therefore subject to the rule of strict construction. There is, under the statute here involved, no prohibition upon the production or marketing of excess quota cotton. Under its power to regulate interstate commerce the Congress, to avoid a wasteful, uneconomic surplus, provided for the establishment of quotas and sought to discourage production and sale in excess of such quotas. * * * He is under no obligation to produce, and having produced is under no obligation to sell; but selling, he incurs an obligation to the Secretary of Agriculture. It is a debt which arises through operation of law. It may not be enforced by criminal sanctions, as in the case of a fine. It is not imposed as punishment but to carry out the power of Congress to regulate transactions in interstate commerce.

The obligation which the marketing quota provisions of the Agricultural Adjustment Act impose upon the petitioner is not a "penalty" in the sense in which that word is used in cases such as the *McCreary* and *Blair* cases. It differs from a true penalty in precisely those characteristics which underlie the supposed general principle that interest may not be allowed upon a penalty. That is to say, the obligation under the Agricultural Adjustment Act is not a measure of retribution which the legislature has fixed for proscribed conduct; it is, rather, in the nature of a debt arising by law upon the marketing of above-quota cotton, designed to discourage, but which does not forbid, the production and marketing by a producer of as much cotton as he pleases.

As this Court has noted, "the Government gave the farmer a choice." *Wickard* v. *Filburn*, 317 U. S. 111, 130. And in so doing, Congress made a deliberate judgment. As passed by the Senate, H. R. 8505, 75th Cong. 2d Sess., the bill which became the Agricultural Adjustment Act, contained the following pertinent provisions:

> SEC. 33 (a). The wilful marketing in interstate or foreign commerce of any cotton produced on a farm for which a quota has been established in excess of the quantity produced on such acreage is hereby prohibited unless prior to such marketing (1) the Secretary shall have, under section 7, released cotton from mar-

keting quota restrictions, or (2) the farmer shall have absorbed such excess marketing through diverting from the production of cotton an acreage, the normal production of which equals or exceeds the amount of such excess marketing. Ginning such cotton and selling it or selling the same in the seed creates a prima facie presumption that such cotton was marketed in interstate or foreign commerce in violation of this title.

(b) Any person knowingly purchasing or selling cotton marketed in violation of subsection (a) shall pay a penalty of 75 per centum of the purchase price of the cotton. Such penalty shall accrue to the United States.

This specific prohibition of above-quota marketing is in marked contrast to the permissive provisions which came out of conference (83 Cong. Rec. 1594), and which were enacted into law. Section 348, Appendix, *infra*, pp. 30–31. See also 82 Cong. Rec. 463, 83 Cong. Rec. 1657, and 82 Cong. Rec. 565–566.

In *United States* v. *Chouteau*, 102 U. S. 603, 611, this Court expressly stated that "the term 'penalty' involves the idea of punishment, and its character is not changed by the mode in which it is inflicted, whether by a civil action or a criminal prosecution." Similarly, this Court in *United States* v. *LaFranca*, 282 U. S. 568, 572,

defined a penalty as "an exaction imposed by statute as punishment for an unlawful act."[18] The obligation here imposed upon petitioner is not penal in character and has none of the implications attendant upon the normal fine or penalty.

Obviously, the least important factor in determining the nature of the imposition upon above-quota marketers under the Agricultural Adjustment Act is the fact that it was designated a "penalty" in the act. For "words are inexact tools at best" (*Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479), and the legal consequences of any given set of circumstances cannot be controlled by the consequences of a dissimilar set of circumstances merely because both sets of circumstances may be loosely described by the same concept. Cf. *United States* v. *American Trucking Associations*, 310 U. S. 534, 543; *Helvering* v. *New York Trust Co.*, 292 U. S. 455, 464.

The essential difference between the petitioner's obligation and a true penalty is revealed in *Usher* v. *United States*, 146 F. 2d 369 (C. C. A. 4), where the United States sued to recover obligations owing on account of the marketing of beyond-quota

[18] The question whether the imposition of a so-called "tax" upon the illegal distribution of liquor was actually a "penalty" was important in the *Chouteau* and *LaFranca* cases since the defendants had been previously convicted on the basis of the same transactions as to which it was asserted a "tax" was owing.

cotton. The defendant on his appeal argued that since the suit was for a "penalty", the Government had to prove its case beyond a reasonable doubt and not just by a preponderance of the evidence. In dismissing this contention, the court noted that the action was civil, and not criminal, and that the "penalty differs from an ordinary penalty which is imposed in connection with the commission of an unlawful act" p. 371. Again, in *Rodgers* v. *United States,* 138 F. 2d 992 (C. C. A. 6), the appellant there (the present petitioner), in defending a suit to require him to file farm operator's reports and to recover "penalties" for cotton marketed in excess of quota, contended that because of the "penalties" involved, the producer's obligation to furnish reports imposed by the Act and the regulations under it, compelled him "to be a witness against himself" contrary to the Fifth Amendment. This contention was rejected, the court finding it "unnecessary to discuss the nomenclature of the Act" and denominating as a "sanction" the obligations which appellant had asserted were either a tax or a penalty (p. 995).

The manner in which the so-called "penalty" here imposed is collected would seem to establish conclusively that it is not essentially penal in nature. Thus the producer may make prepayment of the penalty, or, under prescribed conditions, deposit the amount of the penalty in escrow

or give bond for the same. (See *supra*, p. 6.) If he complies with one of the alternatives, the excess cotton may be marketed and placed in the stream of commerce as freely as any other cotton. The statutory obligation is but another item of cost with which he must reckon.

Finally, it is significant that these so-called "penalties" are allowed to be deducted in computing net income as an "ordinary and necessary" business expense pursuant to Section 23 (a) (1) of the Internal Revenue Code. The general rule is that amounts paid as penalties for violation of statutes are not deductible for Federal income tax purposes either on the ground that such expenditures are not a necessary incident to the conduct of a business or on the ground of public policy. *Commissioner* v. *Longhorn Portland Cement Co.*, 148 F. 2d 276 (C. C. A. 5), certiorari denied, 326 U. S. 728; *Burroughs Building Material Co.* v. *Commissioner*, 47 F. 2d 178 (C. C. A. 2); *Great Northern Railway Co.* v. *Commissioner*, 40 F. 2d 372 (C. C. A. 8). In holding penalties under the Agricultural Adjustment Act to be deductible for income tax purposes, it has been the view of the Treasury Department that "The statute does not prohibit producers from producing the commodity, but merely places a charge on the excess of the quota produced and marketed. The so-called penalties are not paid for the violation of, or noncompli-

ance with, a statute or regulation or for any illegal act, but are paid for the purpose of legalizing the marketing of the excess production, which with this condition the statute sanctions, and are, therefore, made in compliance with the statute." I. T. 3530, 1942–1 Cum. Bull. 43. The deductible character of these "penalties" is entirely inconsistent with the penal attributes which the petitioner would establish as the basis for avoiding payment of interest.

The petitioner has failed to file farm operator's reports, as alleged in the complaint, and the purchasers of his cotton are unknown to the respondent (R. 21–22). The penalty is usually collected by the buyer within the United States and may be collected by other transferees. If a buyer collected the amount of the penalty, as he is required to do, and failed for a long period of time to remit it to the United States, it would be clearly apparent that interest would be allowed in a suit by the United States for recovery of the sum withheld. And yet the amount so collected by the buyer would still be denominated a "penalty" in the terms of the Act. There is no more reason why the producer should be permitted to withhold the payment required by the Act and fully escape any consequences of his unjustified delay in payment by defeating the claim of the United States for interest.

CONCLUSION

For the reasons stated, the judgment of the circuit court of appeals should be affirmed.

Respectfully submitted.

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OCTOBER 1947.

APPENDIX

The Agricultural Adjustment Act of 1938, c. 30, 52 Stat. 31, as amended (7 U. S. C. 1281, *et seq.*), provides in part as follows:

SEC. 345. Whenever the Secretary determines that the total supply of cotton for any marketing year exceeds by more than 7 per centum the normal supply thereof for such marketing year, the Secretary shall proclaim such fact not later than November 15 of such marketing year (or, in case of the marketing year 1937–1938, within ten days after the date of enactment of this Act), and marketing quotas shall be in effect during the next succeeding marketing year with respect to the marketing of cotton. Cotton produced in the calendar year in which such marketing year begins shall be subject to the quotas in effect for such marketing year notwithstanding that it may be marketed prior to August 1. (7 U. S. C. 1345.)

* * * * * *

SEC. 348. Any farmer who, while farm marketing quotas are in effect, markets cotton in excess of the farm marketing quota for the marketing year for the farm on which such cotton was produced, shall be subject to the following penalties with respect to the excess so marketed: 2 cents per pound if marketed during the first marketing year when farm marketing quotas are in effect; and 3 cents per pound if marketed during any subsequent year, except that the penalty shall be 2 cents per pound if cotton of the crop subject to

penalty in the first year is marketed subject to penalty in any subsequent year. (7 U. S. C. 1348.)

* * * * *

SEC. 372. (a) The penalty with respect to the marketing, by sale, of wheat, cotton, or rice, if the sale is to any person within the United States, shall be collected by the buyer.

(b) All penalties provided for in Subtitle B shall be collected and paid in such manner, at such times, and under such conditions as the Secretary may by regulations prescribe. Such penalties shall be remitted to the Secretary by the person liable for the penalty, except that if any other person is liable for the collection of the penalty, such other person shall remit the penalty. The amount of such penalties shall be covered into the general fund of the Treasury of the United States. (7 U. S. C. 1372 (a), (b).)

* * * * *

SEC. 375. (a) The Secretary shall provide by regulations for the identification, wherever necessary, of corn, wheat, cotton, rice, peanuts, or tobacco so as to afford aid in discovering and identifying such amounts of the commodities as are subject to and such amounts thereof as are not subject to marketing restrictions in effect under this title.

(b) The Secretary shall prescribe such regulations as are necessary for the enforcement of this title. (7 U. S. C., Supp. V, 1375.)

The Act of May 26, 1941, c. 133, 55 Stat. 203, 205, provides in part as follows:

Notwithstanding the provisions of the Agricultural Adjustment Act of 1938, as

amended (hereinafter referred to as the Act)—

* * * * *

(9) The marketing penalty for cotton and rice produced in the calendar year in which any marketing year begins (if beginning with or after the 1941–1942 marketing year) shall be at a rate equal to 50 per centum of the basic rate of the loan for cooperators for such marketing year under section 302 of the Act and this resolution. (7 U. S. C., Supp. V, 1330 (9).)

With respect to the collection and payment of penalties, the regulations of the Secretary are substantially identical for the crop years 1940–41, 1941–42, and 1942–43. The regulations for the crop year 1942–43 provide:

SEC. 722.440. *Payment and Collection of Penalties.* (a) *Time when penalties become due.* The penalty shall be due at the time the cotton is marketed by sale, barter, exchange, or gift *inter vivos.* Cotton shall be deemed to be sold when either title to or actual or constructive possession of the cotton is delivered by or on behalf of the producer or any part of the purchase price is paid. Cotton shall be deemed to have been marketed by barter or exchange when it is delivered to the transferee of the cotton by actual or constructive delivery or the transferer has received any part of the property, goods, or services for which the cotton is being bartered or exchanged. Cotton shall be deemed to have been marketed by gift *inter vivos* when there is an actual or constructive delivery of the cotton to the transferee during the lifetime of the producer. Cotton shall be deemed to have

been marketed in processed form when the producer, or some person on his behalf, converts cotton into an article of trade and thereby causes the cotton to lose its identity as seed cotton or lint cotton. An article of trade within the meaning of this provision is any article made in whole or in part from cotton for the purpose of marketing such article.

(b) *Persons liable for collection and payment of penalties.* The penalty in connection with the marketing of cotton by sale to any person within the United States shall be collected by the buyer at the time of sale. The penalty in connection with the marketing of cotton by sale to any person not within the United States or by barter or exchange or gift *inter vivos* shall be paid by the producer. In the case of a barter or exchange or gift *inter vivos*, the penalty may be collected by the person to whom such cotton is transferred, if the producer and the transferee of such cotton agree, as evidenced by the form Cotton 613 covering the transaction, that the penalty shall be collected by the transferee as in the case of the marketing of cotton by sale to any person within the United States. The penalty, if any, due in connection with the marketing of any cotton produced on any farm for which a white marketing card is issued shall not be collected by the buyer or transferee of such cotton but shall be paid by the producer. The penalty, if any, due upon cotton marketed in processed form within the meaning of paragraph (a) shall be paid by the producer or, if the producer and the buyer or transferee agree, the buyer or transferee of the article of trade into which the cotton was converted may collect and remit the penalty.

(c) *Payment of a penalty prior to the marketing of cotton.* Any penalty which would be incurred by any producer upon the marketing of cotton may be paid prior to the time such cotton is marketed, and the treasurer of the county committee for the county in which such cotton was produced shall receive the penalty as in the case of other penalties.

(d) *Manner of collection.* The penalty may be collected by the buyer by receiving the amount thereof from the producer or by deducting from the purchase price of the cotton the amount of the penalty due with respect to the marketing thereof. The penalty may be collected by the transferee by receiving the amount thereof from the producer.

(e) *Issuance of receipts for penalties collected.* Any buyer or transferee of cotton who, as provided for in paragraph (b), collects the penalty with respect to the marketing of cotton shall issue a receipt to the producer from whom the penalty is collected. (7 F. R. 4369; 1940–41 marketing year, Sec. 722.243, 5 F. R. 1894; 1941–42 marketing year, Sec. 722.343, 6 F. R. 972.)

SEC. 722.441: *Remittance of Penalties to the Treasurer of the County Committee.* (a) *Time of remittance.* The penalty shall be remitted not later than 15 calendar days next succeeding the day on which the cotton was marketed by the producer. For and on behalf of the Secretary of Agriculture, the treasurer of the county committee for the county in which the farm on which the cotton was produced is located, or the treasurer of the county committee to whom the report in connection with cotton marketed without the use of the means of identi-

fication prescribed by these regulations is made, shall receive the penalty and issue to the person remitting the penalty a receipt therefor on form Cotton 419 or form Cotton 419–A.

(b) *Form of remittance.* The penalty shall be remitted only in legal tender or by draft, check, or money order drawn payable to the order of the Treasurer of the United States. All checks, drafts, or money orders tendered in payment of the penalty shall be received by the treasurer of the county committee subject to collection and payment at par, and any receipt issued in connection therewith as provided for in paragraph (a) shall bear a notation to that effect and a description of the check, draft, or money order. (7 F. R. 4369; 1940–41 marketing year, Sec. 722.244, 5 F. R. 1894; 1941–42 marketing year Sec. 722.344, 6 F. R. 972.)

SEC. 722.453. (e) *Payment of penalty.* The penalty shall be due at the time cotton is marketed in excess of the farm or producer marketing quota and shall be remitted to the treasurer of the county committee, as otherwise provided in these regulations, at the time the farm operator's report on form Cotton 417 for the farm is required to be submitted, as provided in Sec. 722.450 (d), and no extension or qualification of the time for paying the penalty shall be made or allowed by an officer or employee of the United States Department of Agriculture, member of a county committee, other local committee, or State committee, county agent, or officer or employee of such committee or of the county agent's office. If funds are held in escrow to secure payment of the penalty,

the penalty shall be paid by the use of such funds. Any part of the funds held in escrow in excess of the penalty incurred during the marketing year shall be returned to the person depositing them, in accordance with Sec. 722.442. In the event the principal sum of the bond or the amount of funds deposited in escrow is not sufficient to cover the amount of penalties incurred in respect to the farm, the owner or operator of the farm who gave the bond or deposited the funds in escrow shall be liable for and shall pay a sufficient additional amount to cover the amount of such penalties. Nothing contained in this paragraph shall discharge the other producers on the farm from liability to pay the penalties incurred by them. (7 F. R. 4374; 1940–41 marketing year, Sec. 722.256 (e), 5 F. R. 1900; 1941–42 marketing year, Sec. 722.356 (e), 6 F. R. 978.)

U. S. GOVERNMENT PRINTING OFFICE: 1947

SUPREME COURT OF THE UNITED STATES

No. 58.—October Term, 1947.

W. Clay Rodgers, Petitioner,
v.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[November 10, 1947.]

Mr. Justice Black delivered the opinion of the Court.

In the years 1940, 1941 and 1942 the petitioner produced on his farms and sold more cotton than the quota allotted him under authority of Part IV of the Agricultural Adjustment Act of 1938 as amended. 52 Stat. 31, 55–60; 55 Stat. 203; 7 U. S. C. §§ 1281 *et seq.* The United States filed this suit against petitioner to recover money "penalties" to which § 348[1] of the Act makes non-

[1] Section 348 of the 1938 Act reads as follows:

"Any farmer who, while farm marketing quotas are in effect, markets cotton in excess of the farm marketing quota for the marketing year for the farm on which such cotton was produced, shall be subject to the following penalties with respect to the excess so marketed: 2 cents per pound if marketed during the first marketing year when farm marketing quotas are in effect; and 3 cents per pound if marketed during any subsequent year, except that the penalty shall be 2 cents per pound if cotton of the crop subject to penalty in the first year is marketed subject to penalty in any subsequent year." 52 Stat. 59; 7 U. S. C. § 1348.

The 1941 amendment required computation of the penalty on the following basis:

Notwithstanding the provisions of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the Act)—

. . . . . .

(9) The marketing penalty for cotton and rice produced in the calendar year in which any marketing year begins (if beginning with or after the 1941–1942 marketing year) shall be at a rate equal to 50 per centum of the basic rate of the loan for cooperators for such marketing year under section 302 of the Act and this resolution. 55 Stat. 203, 205; 7 U. S. C., Supp. V, § 1330 (9).

cooperating farmers "subject" who market cotton from their farms in excess of their quota. The District Court rendered judgment for $7,039.52 in penalties plus interest at 6% from the various dates the penalties became due to the date of judgment. The Sixth Circuit Court of Appeals affirmed. 158 F. 2d 835. The Fifth Circuit had previously decided that no interest is allowable on such penalties prior to judgment. *United States* v. *West Texas Cottonoil Co.*, 155 F. 2d 463. We therefore granted certiorari limited to this single question. — U. S. —.

Since penalties under the Agricultural Adjustment Act are imposed under an Act of Congress, they bear interest only if and to the extent such interest is required by federal law. *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697, 714–716; *Royal Indemnity Co.* v. *United States*, 313 U. S. 289, 295–297. There is no language in the Agricultural Adjustment Act or in any other act of Congress which specifically allows or forbids interest on penalties such as these prior to judgment.[1] But the failure to mention interest in statutes which create obligations has not been interpreted by this Court as manifesting an unequivocal congressional purpose that the obligation shall not bear interest. *Billings* v. *United States*, 232 U. S. 261, 284–288. For in the absence of an unequivocal prohibition of interest on such obligations, this Court has fashioned rules which granted or denied interest on particular statutory obligations by an appraisal of the congressional purpose in imposing them and in the light of general principles deemed relevant by the Court. *See, e. g., Royal Indemnity Co.* v. *United States, supra; Board of Comm'rs* v. *United States*, 308 U. S. 343.

As our prior cases show, a persuasive consideration in determining whether such obligations shall bear interest

[1] 28 U. S. C. 811 does allow interest on district court judgments in all civil cases where interest would be allowed by the law of the state in which the court is held.

is the relative equities between the beneficiaries of the obligation and those upon whom it has been imposed. And this Court has generally weighed these relative equities in accordance with the historic judicial principle that one for whose financial advantage an obligation was assumed or imposed, and who has suffered actual money damages by another's breach of that obligation, should be fairly compensated for the loss thereby sustained. *See, e. g., Brooklyn Savings Bank* v. *O'Neil, supra; United States* v. *North Carolina*, 136 U. S. 211, 216; *Funkhouser* v. *J. B. Preston Co.*, 290 U. S. 163, 168.

The contention is hardly supportable that the Federal Government suffers money damages or loss, in the common law sense, to be compensated for by interest, when one convicted of a crime fails promptly to pay a money fine assessed against him. The underlying theory of that penalty is that it is a punishment or deterrent and not a revenue-raising device; unlike a tax, it does not rest on the basic necessity of the Government to collect a carefully estimated sum of money by a particular date in order to meet its anticipated expenditures. For the foregoing reasons this Court's holding that a criminal penalty does not bear interest, *Pierce* v. *United States*, 255 U. S. 398, 405–406, is consistent with its holding that the Government does suffer recoverable damages if a taxpayer fails to pay taxes when due and is therefore equitably entitled to interest. *Billings* v. *United States, supra*. Furthermore, denial of interest on criminal penalties might well be rested on judicial unwillingness to expand punishment fixed for a criminal act beyond that which the plain language of the statute authorizes.

Viewed in light of these principles, we think that the question of interest on the penalties provided in the Agricultural Adjustment Act on non-cooperators should be governed by the rule previously applied by this Court to criminal fines. Although Congress neither wholly prohibited nor made it a crime for a farmer to market cotton

in excess of his quota, still it imposed sanctions upon non-cooperators analogous to those of the criminal law. The purpose of Congress in requiring payment of penalties into the Federal Treasury for marketing above the allotted amount was not to raise revenue for the Government's financial advantage but to deter farmers from planting and marketing more than their quotas. In fact, the whole philosophy of the Agricultural Adjustment Act is based on the theory that the public will be benefited, not damaged, if farmers produce and market within these quotas, thereby avoiding the payment of penalties. The framework of the Act itself, both as originally passed and as amended, and the reports of the congressional committees that drafted it, show a prime purpose to limit national and individual farm production and marketing to the quotas allotted, and show that the penalties were solely intended to deter farmers from exceeding those quotas.[3] After careful consideration the original 1938 Act was amended in 1941 for the express purpose of making the farmers' penalties higher, because the prior penalties had not in practice proved a severe enough sanction to reduce production the desired amount. The House committee said in its report on the 1941 amendment:

> "As in the case of corn and wheat, it appears that the present rate of penalty [for cotton] is too low to result in the desired adjustment of the amount to be marketed during the marketing year."[4]

And with reference to wheat and corn, the committee had reported:

> "With the higher penalties, it is expected that growers generally will store the farm marketing excesses

[3] Sen. Rep. No. 1295, 75th Cong., 2d Sess. 6 (1937); H. R. Rep. No. 1645, 75th Cong., 2d Sess. 1, 36 (1937); H. R. Rep. No. 1767, 75th Cong., 3d Sess. 90 (1938); H. R. Rep. No. 364, 77th Cong., 1st Sess. 3 (1941).

[4] H. R. Rep. No. 364, 77th Cong., 1st Sess. 3 (1941).

rather than pay the penalty and place the commodity on the market at the time when it is not needed."[5]

In addition to these high penalties, the Act, as originally passed and as amended, wholly deprived non-cooperators like petitioner of substantial benefits authorized by the Soil Conservation Act and of a large part of the loan value provided by the Government for cotton farmers who did not exceed their quota.[6] We are unable to say that it would be consistent with the congressional purpose for the courts to add interest to these very substantial penalties already imposed upon non-cooperating farmers.[7]

Reversed.

[5] *Id.* at 2.

[6] §§ 302 (c), 349 of the Agricultural Adjustment Act of 1938; 52 Stat. 43, 59; 7 U. S. C. § 1302 (c), 1349.

[7] See as to penalties in general, *Helwig* v. *United States*, 188 U. S. 605; *United States* v. *Chouteau*, 102 U. S. 603; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 401; *Helvering* v. *Mitchell*, 303 U. S. 391; *United States* v. *Childs*, 266 U. S. 304; *Rodgers* v. *United States*, 138 F. 2d 992. For decisions of state courts which grant interest on statutory obligations but disallow interest on statutory penalties, see cases collected in Note, 27 Ann. Cas. 1913 B, 853, 855–856; Note, 28 L. R. A. (N. S.) 1, 74–75 (1910); 1 *Sutherland, Damages*, § 330 (1916).

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[November 10, 1947.]

Mr. Justice Burton, dissenting.

The sums due to the Government are fixed obligations with fixed times of payment. They are debts incidental to the lawful conduct of business and not penalties imposed for violations of law. Accordingly, the debtor should pay and the Government should collect interest on them, as on other debts to the Government, to compensate for delays in their payment. The Agricultural Adjustment Act expressly fixed the amount and time for payment of the sums in question although it did not expressly mention the accrual or denial of interest on delayed payments. However, the federal rule is well-established that, without express statutory reference to the subject of interest, interest is due to the Government on unpaid statutory debts after they have become due in fixed amounts at fixed times, such as those for customs duties and taxes.

> "Thus, as to the necessity for a statute it was long ago here decided in view of the true conception of interest, that a statute was not necessary to compel its payment where in accordance with the principles of equity and justice in the enforcement of an obligation, interest should be allowed." *Billings* v. *United States*, 232 U. S. 261, 286.[1]

This statement was made by Chief Justice White, speaking for the Court, in a case upholding the collection

[1] "The conflict between the systems is pronounced and fundamental. In the one, the state rule, except as to contract, no interest without statute; in the United States rule, interest in all cases where equitably due unless forbidden by statute. In one no suit for taxes as a debt

of interest on a tax payable to the United States, under a statute that contained no reference to the accrual of interest.

The requirement that interest be paid to the Government upon the debts due to it under the Agricultural Adjustment Act not only is "in accordance with the principles of equity and justice" called for by the general rule just stated but the accrual of interest in favor of the Government under that Act also is thoroughly consistent with, and helpful to, the accomplishment of its purpose of price and crop control. The disallowance of such interest is equally inconsistent with, and a limitation upon, the accomplishment of that purpose.

The defaulted payments on which interest is claimed here became due because of the petitioner's sales of cotton in excess of his statutory quota and such payments are referred to in the Act as "penalties." However, the context shows that, instead of being criminal penalties imposed for violations of the law, they are "marketing penalties" consisting of governmental charges added to the presale expenses of the seller, especially to help keep prices and sales in line with the economic program of the Government. Satisfaction of these charges is made a condition of the seller's *legal* right to sell his excess cotton at a particular time. They are the very opposite of penalties imposed for making *illegal* sales. They are law-

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without express statutory authority, in the other the right to sue for taxes as for a debt in every case where not prohibited by statute.

"From this review it results that the doctrine as to nonliability to pay interest for taxes which have become due which prevails in the state courts is absolutely in conflict with the doctrine applied to the same subject in this court and cannot now be made the rule without repudiating settled principles which have been here applied for many years in various aspects and without in effect disregarding the sanction either expressly or impliedly given by Congress to such rules. . . . Under this condition we can see no ground for departing from the rule which the cases enforced, ..." *Billings* v. *United States*, *supra*, at pp. 287–288.

ful, "ordinary and necessary" business expenses incidental to his sales. They are deductible from his taxable income, whereas criminal penalties are not deductible from taxable income.[2] These "marketing penalties" are also unlike criminal penalties in that they may be paid in advance, deposited in escrow or security given for their payment. When that is done, the seller may, in his usual manner, dispose of the excess-quota cotton to which the payments relate. Cotton marketing quota regulations, 1942–43, § 722.440 (c), 7 Fed. Reg. 4369; *id.* § 722.453, 7 Fed. Reg. 4374. These debts are more comparable to customs duties than to criminal penalties.[3] Apparently these charges are collectible by the Government only by civil proceed-

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[2] "Although the amounts paid by the producer are designated as penalties in the statute and regulations referred to above, it appears that the purpose of the statute is to place a charge against the producer on the sale of the commodity which was produced in excess of the quota. The statute does not prohibit producers from producing the commodity, but merely places a charge on the excess of the quota produced and marketed. The so-called penalties are not paid for the violation of, or noncompliance with, a statute or regulation or for any illegal act, but are paid for the purpose of legalizing the marketing of the excess production, which with this condition the statute sanctions, and are, therefore, made in compliance with the statute. It is accordingly the view of this office that the so-called penalties are deductible from gross income under section 23 (a) of the Internal Revenue Code in computing net income as ordinary and necessary expenses incurred in carrying on a trade or business." I. T. 3530, 1942–1 Cum. Bull., 43, 45–46.

Payments in the nature of penalties for the *violation* of federal or state statutes in the ordinary use of that term are not deductible. *Commissioner* v. *Longhorn Portland Cement Co.*, 148 F. 2d 276; *Burroughs Bldg. Material Co.* v. *Commissioner*, 47 F. 2d 178; *Great Northern R. Co.* v. *Commissioner*, 40 F. 2d 372.

[3] Customs duties are personal debts to the United States. *Meredith* v. *United States*, 13 Pet. 486, 493. Interest is collectible on the debt to the Government arising out of the imposition of customs duties. *United States* v. *Mexican International R. Co.*, 154 F. 591. It is common knowledge that, while some customs duties or tariffs

ings and liability for them need not be established beyond a reasonable doubt. *Usher* v. *United States*, 146 F. 2d 369, 371.

The payments are imposed in part for revenue purposes although especially as a means of inducing cotton owners to control their sales of cotton in interstate and foreign commerce in accordance with the economic policies of the Government. During its consideration of the Agricultural Adjustment Act, Congress declined to adopt a proposal to treat such sales as in violation of law [4] and adopted instead the policy recognizing such sales as lawful sales conditioned upon payment to the Government of the charges here being considered. Financial burdens which may be postponed without the payment of interest are much less burdensome than those that are not postponable or that are subject to the accrual of interest during their postponement. The omission of the usual interest charge on postponed marketing penalties therefore decreases the force of the Act as a deterring factor and runs counter to the special purpose of the Act.

For those reasons, the judgment of the Circuit Court of Appeals, affirming that of the District Court allowing interest from the date of default, should have been affirmed.

MR. JUSTICE RUTLEDGE joins in this dissent.

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may have been levied "for revenue only," many have been enacted as "protective tariffs" in which a primary interest of the Government was, as under the Agricultural Adjustment Act, to restrict the flooding of the market with certain goods at a certain time. The collection of interest on delayed payments of customs duties would bear a similar relation of helpfulness to the Government's economic and financial policies as would the collection of interest on defaulted market penalties. The Government, under the Agricultural Adjustment Act, not only seeks to restrict excess-quota sales, but it also seeks to add to its current cash resources from which it proposes to make the loans to cooperating producers which are authorized by the Act.

[4] § 33, H. R. 8505, 75th Cong., 2d Sess. (1937), as passed by the Senate but later rejected.